

REMARKSI. Introduction

In response to the Second Office Action dated July 1, 2005, claims 1, 9, and 23 have been amended, and claim 34 has been added. Claims 1-34 remain in the application. Re-examination and re-consideration of the application, as amended, is requested.

II. Claim Amendments

Applicants' attorney has made amendments to the claims as indicated above. These amendments were made solely for the purpose of clarifying the language of the claims, and were not required for purposes of patentability.

III. The Cited References and the Subject Invention

## A. The Klosterman Reference

U.S. Patent No. 6,072,983, issued June 6, 2000 to Klosterman discloses a merging multi-source information in a television system. The system provides a scheme for margin television schedule information received from multiple sources (26, 28, 30 and 34). In the preferred embodiment, a microprocessor (36) mixes and sorts the schedule information received from multiple source devices (26, 28, 30 or 34). The schedule information is then displayed in a television schedule guide (50). A user can select a program (60 or 62) by pointing to that program in the displayed schedule information (50). The system (10) then carries out an automatic switching/tuning such that the required source device (26, 28, 30 or 34) is input to the destination device (22), and a tuner is then tuned to the selected program's channel (52).

## B. The Eastman Reference

U.S. Patent No. 5,940,737, issued August 17, 1999 to Eastman discloses a method and apparatus for receiving and/or processing communication signals having one of a plurality of alternate signal characteristics is provided. In a particular embodiment, a desired satellite signal (e.g. DBS) having a desired characteristic may be selected from a plurality of characteristics. The characteristics may include (among others) satellite location, carrier frequency, and/or polarization state. In a preferred embodiment, a receiver generates a control signal which is coupled to an

external device (e.g. LNB, and/or satellite selector). The external device includes a decoder which receives the control signal and configures the external device for processing the desired characteristic. In a preferred embodiment, the control signal comprises a pulse train generated by the receiver utilizing a two voltage level output device under suitable software control.

#### C. The Stinebruner Reference

U.S. Patent No. 6,133,910, issued October 17, 2000 to Stinebruner discloses an apparatus and method for integrating a plurality of video sources. The video system utilizes a "virtual tuner" that integrates signals from multiple video sources to provide a plurality of "virtual channels", each of which has both a video source and a channel associated with it. When a virtual channel is selected, the correct video source is selected and tuned to the correct channel automatically. The virtual tuner may be embodied in a television or in a separate electronic component coupled thereto, such as a direct broadcast satellite receiver. Alternatively, the video system may be embodied in a universal remote control which is capable of outputting multiple signals to multiple devices in response to a key depression, using either one or two signal transmitters. Channel information may also be downloaded or obtained from a database, for example, to customize an electronic component to receive local broadcast channels.

#### D. The Norin Reference

U.S. Patent No. 6,434,384, issued August 13, 2002 to Norin et al. discloses a non-uniform multi-beam satellite communications system and method. The satellite broadcast system and method, which is said to be particularly useful for television signals, allows for local as well as nationwide broadcast service by allocating greater satellite resources to the more important local service areas. This is accomplished by broadcasting a non-uniform pattern of local service beams and designing the system to establish different service area priorities through factors such as the individual beam powers, sizes, roll-off characteristics and peak-to-edge power differentials. Frequency reuse is enhanced by permitting a certain degree of cross-beam interference, with lower levels of interference established for the more important service areas.

#### E. The Eyer Reference

U.S. Patent No. 6,401,242, issued June 4, 2002 to Eyer et al. discloses a method and apparatus for designating a preferred source to avoid duplicative programming services. Interactive Program Guide (IPG) data for television is delivered to integrated receiver-decoders (IRDs) in a decoder population via, for example, a satellite network. The IPG data provides scheduling information for global and local programming services which are carried via the satellite network as well as another network such as a CATV network or a terrestrial broadcast network. Each IRD is assigned to an IPG region using unit addressing. At the IRD, IPG data is filtered so that only the global data and the region-specific data for the IRD's IPG region is retained and processed by the IRD. Channel map data is also delivered to the IRDs so that bundles of IRD data can be filtered out using firmware filtering to discard program sources that are not present in the channel map. The IRD data which is retained after filtering is used to provide scheduling information via an on-screen display. A preferred source may be designated when there are duplicative channels on the different networks.

#### F. The Thomas Reference

U.S. Patent No. 5,666,645, issued September 9, 1997 to Thomas et al. discloses a data management and distribution system and method for an electronic television program guide. The data management and distribution system for an electronic program guide ("EPG") for television programs comprises an automated data collection subsystem, a manual entry and correction subsystem, a database validation subsystem, an edition generation subsystem, a configuration subsystem, and a status and control subsystem. The system may further comprise a feed generation subsystem if one or more of the EPG providers supported by the EPG distributor requires a live feed of data. The automated data collection subsystem collects EPG data from multiple sources in various formats, filters the data based on the needs of the EPG providers supported, and places the data in a centralized database in a form suitable to support the different environmental contexts of the EPG providers. The manual entry and correction subsystem permits the EPG distributor to make manual corrections, additions, and deletions to the data stored in the database. The database validation subsystem verifies the data stored in the database in accordance with designated verification options. The edition generation subsystem generates the different editions of the EPG for the different EPG providers supported by the EPG distributor. The configuration subsystem

receives information from the various EPG providers and furnishes this information to the other subsystems which utilize the information in performing their respective tasks. The status and control subsystem monitors the operation of the data management and distribution system as a whole. The various feeds and editions are then transmitted to the EPG providers by, e.g., satellite, wire, cable, etc. The EPG providers receive the feeds and editions and use them provide one or both of a dedicated channel EPG and interactive EPG to subscribers.

IV. Second Office Action Prior Art Rejections

With Respect to Claims 1, 9, and 16: Claim 1 recites:

*In a network broadcasting a first signal having a first set of programs to a plurality of subscribers and a second signal having a second set of programs, a method of providing program guide information describing the second set of programs, comprising:*

*broadcasting first program guide information describing the first set of programs to the subscribers on a first service channel on a first signal; and*

*broadcasting second program guide information describing the second set of programs to a subset of the subscribers on the first service channel on a second signal, wherein a fundamental signal characteristic of the second signal differs from the fundamental signal characteristic of the first signal.*

The Applicants Remarks indicated that Klosterman does not disclose *broadcasting second program guide information describing the second set of programs to a subset of the subscribers on the first service channel on a second signal.*

The Second Office Action first responds that the feature "the same service channel being the same channel used to broadcast the first program guide" is not recited in the claims. The Applicants respectfully disagree. Claim 1 recites that the first program guide is transmitted on *a first service channel on a first signal* and that the second program guide is broadcast *on the first service channel on a second signal*. Clearly, they are broadcast on the same service channel.

The Second Office Action then responds that the feature is, in fact, disclosed in the Klosterman reference. Specifically with regard to Applicants' example (2), in which program guides from a first and a second satellite are combined, the Office Action responded:

*"the input from a first satellite and a second satellite does disclose a second program guide information transmitted [on] the same service channel as the first [program guide information] since the first and second program guide information are transmitted via satellite broadcast channel (first service channel)."*

The Applicants can find no such disclosure in the Klosterman reference. As the Second Office Action has declined to indicate where this disclosure might be found, the Applicants are left to speculate as to what is meant by the "satellite broadcast channel."

The Second Office Action appears to argue that the first and second program guide is transmitted on the same "channel" because they are both broadcast on what the Second Office Action calls a "satellite broadcast channel". The Second Office Action does not specify what a "satellite broadcast channel" is, but presumably regards it as a "channel" of some sort that is used to transmit the signal from both satellites). There are several problems with this argument.

First, claim 1 recites a "service channel", not a "channel". Every term in claim 1 must be considered, and the Second Office Action's interpretation of the term "channel" is inconsistent with claim one's recitation of a "service channel".

Second, the Second Office Action's interpretation of the term "channel" is inconsistent with Klosterman itself. Klosterman refers to local channels, television channels and the like, but never refers to the signals transmitted by both satellites as a "channel". Instead, Klosterman specifically teaches a meaning of "channels" that is inconsistent with what the Second Office Action suggests:

Furthermore, when program information is received from multiple satellite sources and a desired channel is selected, the present invention can, in one embodiment, automatically move the customer's satellite dish such that the customer receives the desired program from the associated source. The present invention then tunes to the correct channel. (col. 3, lines 28-35)

Third, if the Second Office Action's "satellite broadcast channel" encompasses signals with different content, each transmitted on the same "satellite broadcast channel", Klosterman is still unavailing, because claim 1 recites that the first and the second signals differ in a fundamental signal characteristic. If the Second Office Action's "satellite broadcast channel" encompasses signals with different fundamental characteristics, how can they be regarded to be on the same "satellite broadcast channel"?

The Second Office Action's interpretation of the term "channel" is also impermissible because claim one recites that the first program guide information is broadcast on a first service channel on a first signal, not a first signal on a "satellite broadcast channel" or any other kind of channel.

While it is permissible to give claim terms their broadest possible interpretation in determining their allowability, it is not permissible to do so when that interpretation is inconsistent with the both the claims and the reference relied upon.

Claim 1 also recites that the second program guide information is broadcast to a *subset* of the subscribers. The Second Office Action has not indicated where this feature is found in the references of record.

With regard to whether it is appropriate to combine the Klosterman and Eastman references, the Second Office Action indicates that such motivation can be found "in order to alleviate the need to move the satellite dish for receipt of signals from a second source." In the first instance, the Applicants note that satellite antennas for receiving digital video are typically narrow in beamwidth, and typically, use antennas with single reflectors and multiple feeds in order to "avoid the need to move the satellite dish for receipt of signals from a second source." Hence, the proffered motivation is illusory and likely the product of hindsight reconstruction.

The Applicants also note that even if the proffered motivation is sufficient to make out a *prima facie* case of obviousness, the Applicants have rebutted that *prima facie* case. The Applicant has pointed out that Klosterman teaches that when a channel from another satellite is selected, the antenna is slewed to point at the second satellite instead of the first, thus teaching physical diversity between the signals and that the signals do not differ in a fundamental signal characteristic.

The Second Office Action answers by disagreeing that Klosterman "precludes a motivation to combine the references."

However, rebuttal of a *prima facie* case of obviousness does not require that the Applicant show that the modification be *precluded*. All that is required is to show that the art relied upon teaches away from the Applicants' invention. As recited in M.P.E.P. § 1504.03:

**"A *prima facie* case of obviousness can be rebutted if the applicant...can show that the art in any material respect 'taught away' from the claimed invention...A reference may be said to teach away when a person of ordinary skill, upon reading the reference...would be led in a direction divergent from the path that was taken by the applicant." *In re Haruna*, 249 F.3d 1327, 58USPQ2d 1517 (Fed. Cir. 2001).**

For the reasons already discussed, the Applicants respectfully submit that claim 1 is patentable over all of the art of record.

Claims 9 and 16 recite features analogous to those of claim 1 and is patentable for the same reasons.

With Respect to Claim 23: As amended, claim 23 recites:

*An apparatus for use with a system broadcasting a first signal having a first set of programs to a plurality of subscribers and a second signal having a second set of programs to a subset of the subscribers, comprising:*

*a compiler, configured to segment the programs into the first set of programs and the second set of programs, and to generate first program guide describing the first set of programs and second program guide information describing the second set of programs;*

*a first transmitter, communicatively coupled to the compiler, for transmitting first program guide information describing the first set of programs on a first service channel on ~~[[a]] the first signal~~; and*

*a second transmitter, communicatively coupled to the compiler, for transmitting the second program guide information describing the second set of programs on the first service channel on ~~[[a]] the second signal~~; wherein a fundamental signal characteristic of the second signal differs from the fundamental signal characteristic of the first signal.*

Claim 23 is rejected as unpatentable over Klosterman in view of Thomas, and in further view of Eastman.

As a threshold matter, Claim 23, like claim 1, recites the transmission of first program guide information ... on a first service channel on the first signal and ... the transmission of the second program guide information ... on the first service channel on the second signal. For all the reasons described above, these features are not taught by Klosterman and Eastman, even when combined. Also, for the reasons described above, the Applicants respectfully disagree that there is a teaching to combine the Klosterman and Eastman references.

Turning first to what Klosterman discloses, the Second Office Action indicates that the transmission of first program guide information ... on a first service channel on the first signal is disclosed by Klosterman's "TRD box 28 receives television programs along with other information via, in one embodiment, satellite dish 29" and the transmission of the second program guide information ... on the first service channel on the second signal by Klosterman's "program guide information can be received through cable box 26, other inputs 30, antenna 34 and/or through any other transmission medium (e.g. dedicated twisted pair telephone line)."

This is incorrect. Television program signals received on a satellite dish 29 are *not* received on the same channel (the *first service channel* of claim 23) channel as those received through a cable box 26, other inputs 30, antenna 34, and a dedicated twisted pair telephone line.

Finally, the Applicants also disagree that there is a teaching to combine the Klosterman and Thomas references. Plainly, Klosterman is directed to a system in which program guide information from a variety of different sources are received and merged *by the user's receiving equipment*. Just as plainly, Thomas is directed to a system in which program guide information is obtained from a

variety of sources, merged by a third party and provided to broadcasters so that they may broadcast a merged program guide, thus obviating the need for the user's equipment to merge the program guide information. Since Klosterman and Thomas plainly teach entirely different approaches to the same problem, the Applicants cannot agree that there is any teaching to combine the them.

V. Dependent Claims

Dependent claims 2-8, 10-15, 17-22, and 24-33 incorporate the limitations of their related independent claims, and are therefore patentable on this basis. In addition, these claims recite novel elements even more remote from the cited references. Accordingly, the Applicants respectfully request that these claims be allowed as well.

VI. New Claims

New claim 34 is presented for the first time in this Amendment. Claim 34 is similar to claim 1, but recites additional features further specifying the nature of the "service channels" recited in the claim, and rendering it even further remote from the cited references.

VII. Conclusion

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants' undersigned attorney.

Respectfully submitted,

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